

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Russo	Team: Squad #10	CCRB Case #: 202102541	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/26/2021 3:00 AM	Location of Incident: Marble Hill Avenue and West 230th Street	Precinct: 50	18 Mo. SOL 10/26/2022	EO SOL 10/26/2022	
Date/Time CV Reported Mon, 04/26/2021 3:28 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 04/26/2021 3:28 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Christina Moncion	11670	954455	052 PCT
2. PO Edgar Rivera	05576	955381	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Mildred Restrepo	25268	947839	050 PCT
2. POM Jeremy Sanchez	26086	964275	050 PCT
3. POM Christophe Knitter	03676	952941	050 PCT
4. POM Matthew Cutri	03963	967469	050 PCT
5. POM Jonathan Manzueta	17653	964137	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Christina Moncion	Abuse: Police Officer Christina Moncion stopped the vehicle in which § 87(2)(b) was an occupant.	
B. PO Edgar Rivera	Abuse: Police Officer Edgar Rivera stopped the vehicle in which § 87(2)(b) was an occupant.	
C. PO Edgar Rivera	Abuse: Police Officer Edgar Rivera frisked § 87(2)(b)	
D. PO Edgar Rivera	Abuse: Police Officer Edgar Rivera interfered with § 87(2)(b) use of a recording device.	
E. PO Edgar Rivera	Force: Police Officer Edgar Rivera used physical force against § 87(2)(b)	
F. PO Edgar Rivera	Abuse: Police Officer Edgar Rivera refused to provide his name to § 87(2)(b)	
G. PO Edgar Rivera	Abuse: Police Officer Edgar Rivera refused to provide his shield number to § 87(2)(b)	
H. PO Christina Moncion	Abuse: Police Officer Christina Moncion searched the vehicle in which § 87(2)(b) was an occupant.	
I. PO Edgar Rivera	Discourtesy: Police Officer Edgar Rivera spoke discourteously to § 87(2)(b)	
J. PO Edgar Rivera	Abuse: Police Officer Edgar Rivera threatened to arrest § 87(2)(b)	
K. PO Christina Moncion	Abuse: Police Officer Christina Moncion failed to provide § 87(2)(b) with a business card.	
L. PO Edgar Rivera	Abuse: Police Officer Edgar Rivera failed to provide § 87(2)(b) with a business card.	

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On April 26, 2021, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On April 26, 2021, at approximately 3:00 a.m., Police Officers Christina Moncion and Edgar Rivera, of the 52nd Precinct, stopped § 87(2)(b) vehicle in the vicinity of Marble Hill Avenue and West 230th Street in the Bronx (**Allegations A and B: Abuse of Authority-Stop**, § 87(2)(g)). Upon initiation of the stop, PO Moncion asked § 87(2)(b) to step out of the vehicle. PO Rivera conducted a frisk of § 87(2)(b) person and told him to step to the rear of the vehicle (**Allegation C: Abuse of Authority-Frisk**, § 87(2)(g)). § 87(2)(b) had his phone in his hand to record the incident and PO Rivera allegedly told him that he could not record (**Allegation D: Abuse of Authority-Interference with recording device**, § 87(2)(g)). § 87(2)(b) attempted to move his body and PO Rivera allegedly squeezed his left forearm to keep him from moving (**Allegation E: Force-Physical Force**, § 87(2)(g)). § 87(2)(b) asked for PO Rivera's name and shield number, to which PO Rivera allegedly responded, "no" (**Allegation F: Abuse of Authority-Refusal to provide name**, § 87(2)(g)). (**Allegation G: Abuse of Authority-Refusal to provide shield number**, § 87(2)(g)).

PO Moncion searched § 87(2)(b) vehicle (**Allegation H: Abuse of Authority-Vehicle Search**, § 87(2)(g)). While PO Moncion searched the vehicle and at multiple other points in the incident, PO Rivera made statements using profanity, including calling § 87(2)(b) an "asshole", and accusing him of talking "shit" (**Allegation I: Discourtesy-Word**, § 87(2)(g)). PO Moncion did not recover anything from the vehicle search. When § 87(2)(b) returned to his vehicle, PO Rivera told him that if he tried to be "funny" and call 911 about someone having a gun in their vehicle, he would be arrested (**Allegation J: Abuse of Authority-Threat of Arrest**, § 87(2)(g)). Neither PO Rivera nor PO Moncion provided § 87(2)(b) with business cards at the conclusion of this incident (**Allegation K: Abuse of Authority-Failure to provide RTKA cards**,

§ 87(2)(g))

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

was not arrested or issued a summons as a result of this incident.

The investigation obtained Body-Worn Camera footage from Police Officer Jeremy Sanchez (**BR01, BR02**), PO Christopher Knitter (**BR03, BR04**), PO Matthew Cutri (**BR05, BR06**), PO Jonathan Manzueta (**BR07, BR08**), PO Mildred Restrepo (**BR09, BR10**), PO Moncion (**BR11, BR12**), and PO Rivera (**BR13, BR14**). There was no other video of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Christina Moncion stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Police Officer Edgar Rivera stopped the vehicle in which § 87(2)(b) was an occupant.

PO Moncion (**BR11, BR12**) and PO Rivera (**BR13, BR14**), who were the first officers on scene, do not have BWC that captures what led to the stop of § 87(2)(b) vehicle. However, the 00:55 mark of PO Moncion's BWC (**BR11, BR12**) shows that the 911 caller's vehicle was double parked on scene prior to the officers' exit of the vehicle. As PO Moncion approaches § 87(2)(b) vehicle, the driver's side window is completely rolled down. The rear-passenger window on the same side is slightly rolled up, revealing a tinted window. PO Rivera's BWC (**BR13, BR14**) shows, at the 03:30 mark, that § 87(2)(b) confirms that he conducted a U-Turn prior to being stopped. The U-Turn is not captured in either officer's BWC. PO Matthew Cutri's BWC (**BR05**,

BR06) shows, at the 01:07 mark, a conversation that officers had with the 911 caller. The caller states that multiple vehicles have been following him around. He provides descriptions of the vehicles, noting that there was a silver vehicle among them. PO Christopher Knitter's BWC (**BR03**, **BR04**) shows, at the 02:18 mark, that he and PO Sanchez are speaking to the 911 caller, who confirms that about 10 vehicles have been following him for a week. At the 03:33 mark, the 911 caller states that § 87(2)(b) vehicle is one of the cars that have been following him; however, the driver who he saw with a weapon was in a White Jeep Cherokee.

§ 87(2)(b) stated (**BR15**) that as he went down the hill of Marble Hill Avenue, which is a two-way street, he observed an unmarked police vehicle driving up the hill in the opposite direction. At the end of the hill, the unmarked vehicle conducted a U-turn, pulled up behind § 87(2)(b) vehicle, and signaled for him to pull over with lights and sirens. § 87(2)(b) pulled over immediately. Prior to the stop, § 87(2)(b) did not mention that he was committing any traffic violations. § 87(2)(b) has tints on his windows, but he had them all completely rolled down by the time the officers approached his vehicle.

PO Rivera (**BR16**) stated that his precinct—the 52nd—shares the same radio frequency as the 50th Precinct. On the date of this incident, the 50th Precinct received a radio run, where a male stated that two people were following him and that he saw a firearm in one of the vehicles. The vehicles were said to be an Acura and a Toyota. PO Rivera did not remember if the male specified which vehicle the weapon was in, where inside the vehicle the firearm was, or if he provided any additional information, including the colors of the vehicles. PO Rivera did not remember if the 911 caller was anonymous or identified. PO Moncion and PO Rivera canvassed the area where the male stated he was being followed, which was near West 230th Street and Broadway. The officers observed a vehicle that matched the description of one of the reported vehicles, but PO Rivera did not remember if it was the Acura or the Toyota. PO Rivera did not remember where he and PO Moncion were relative to the observed vehicle when they noticed it. They activated their lights to signal for the driver—§ 87(2)(b)—to pull over on West 230th Street, between Broadway and the next street going Westbound. Aside from matching the description on the radio run, PO Rivera did not remember if there were any other reasons for stopping the vehicle. Prior to stopping § 87(2)(b) PO Rivera did not recall if he or PO Moncion made a call to the 911 caller.

PO Moncion (**BR17**) stated that the 50th precinct received a radio run regarding three vehicles following him, one of the drivers of which possessed a firearm. The vehicles' descriptions included an Acura, a pickup truck, and a third vehicle that she did not remember. She did not remember if the 911 caller specified which vehicle the weapon was in or where in the vehicle the weapon was located. The 911 caller was identified, and PO Moncion believed the caller stated that he was on scene. PO Moncion, who was driving, crossed over to the 50th Precinct to canvas the area. As the officers approached from the train station on 230th Street and Broadway from the west, they observed a vehicle that was heading Eastbound and matched the description of one of the vehicles noted in the radio run—either an Acura or an Infinity. The vehicle had tints on all of the windows. As the officers approached the vehicle, PO Moncion noticed a different vehicle, later determined to belong to the 911 caller, following the vehicle with the tinted windows. The driver of the vehicle with the tinted windows, § 87(2)(b) conducted an illegal U-Turn when he saw the officers heading in his direction with the lights on. The 911 caller remained on scene, on the side where PO Moncion initially saw him. PO Moncion pulled up behind § 87(2)(b) vehicle, with the lights and sirens on, signaling for him to pull over. The 911 caller pointed repeatedly at § 87(2)(b) vehicle, saying "That's him". PO Moncion's reason for stopping § 87(2)(b) was the matching description to that provided in the 911 call, the 911 caller pointing at the vehicle, the tints, and the illegal U-turn.

PO Matthew Cutri's memo book, which is the only one documenting this incident, lists the location of the 911 call pertaining to this incident at West 230th Street and Broadway (**BR18**).

The investigation received negative results for the EVENT Information pertaining to this job—§ 87(2)(b) (**BR19**). 911 communication audio files were expired.

New York Consolidated Laws, Vehicle and Traffic Law - VAT § 375 notes that no person shall operate any motor vehicle upon any public highway, road, or street where the side windows on either side of the vehicle are composed of, covered by, or treated with any material which has a light transmittance of less than seventy percent (**BR21**).

New York Consolidated Laws, Vehicle and Traffic Law - VAT § 1160 notes that, where more than one lane of a highway has been designated for left turns, U-turns shall be made only from the lane so designated that is adjacent to the marked center line (**BR22**).

PO Moncion's BWC captures the presence of tints or light transmittance on the rear-passenger side window of § 87(2)(b) vehicle as officers approached, which both she and § 87(2)(b) mentioned in their CCRB statements. The same BWC clip captures § 87(2)(b) acknowledging that he made an illegal U-turn prior to the officers stopping him, which PO Moncion also noted in her statement. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Edgar Rivera frisked § 87(2)(b)

Neither PO Moncion's BWC (**BR11, BR12**) nor PO Rivera's BWC (**BR13, BR14**) captures either of them speaking with the 911 caller prior to approaching § 87(2)(b) vehicle. PO Rivera's BWC (**BR13, BR14**) shows, at the 01:23 mark, that § 87(2)(b) steps out of his vehicle. PO Rivera conducts a frisk of his person on the driver's side of § 87(2)(b) vehicle, patting down § 87(2)(b) legs. PO Rivera is not captured entering § 87(2)(b) pockets or recovering anything from his person.

As previously noted, PO Christopher Knitter's BWC (**BR03, BR04**) shows, at the 02:18 mark, that he and PO Sanchez are speaking to the 911 caller, who confirms that about 10 vehicles have been following him for a week. At the 03:33 mark, the 911 caller states that § 87(2)(b) vehicle is one of the cars that have been following him; however, the driver who he saw with a weapon was in a White Jeep Cherokee. PO Moncion and PO Rivera are across the street, by § 87(2)(b) vehicle, during this conversation.

§ 87(2)(b) (**BR15**) stated that, while at the rear of his vehicle, PO Rivera patted down § 87(2)(b) entire body, including his upper body, arms, legs, and waistline. PO Rivera frisked the areas three times, back-to-back.

PO Rivera (**BR16**) stated that when § 87(2)(b) stepped to the rear of the vehicle, § 87(2)(b) appeared nervous, given his continued looking around. PO Rivera conducted a frisk of § 87(2)(b) person to ensure that he did not have any weapons on his person. He did not observe any bulges on his person or any other indication of a weapon. PO Rivera frisked § 87(2)(b) anywhere that he could have placed a firearm—waistband, pockets, legs. PO De Leon likely began from § 87(2)(b) upper torso and worked his way down. PO Rivera did not recover anything from the frisk.

PO Moncion's statement (**BR17**) was consistent with that of PO Rivera. PO Moncion asked § 87(2)(b) to step out of the vehicle and step to the rear, and PO Rivera frisked him. PO Moncion did not remember the extent of the frisk, and nothing was recovered from § 87(2)(b) person. PO Moncion did not observe any bulges or other indications of a weapon on § 87(2)(b) person.

People v. Robinson, 125 A.D.2d 259 found that an officer, who has stopped a person based on a reasonable suspicion of criminality and has reason to believe they are dealing with an armed and dangerous individual, may conduct a protective frisk for weapons of that person. A reasonable intrusion is generally a pat down of the detained person's outer clothing to determine the existence of a weapon. Once the limited intrusion fails to reveal a weapon, the search must stop (**BR23**).

As mentioned in Allegations A and B, neither PO Moncion nor PO Rivera were certain if the 911 caller mentioned, in his initial call, that he observed a weapon in § 87(2)(b) vehicle or

if it was in one of the other vehicles allegedly following him. The BWC videos discussed above confirm that PO Moncion and PO Rivera did not speak with the 911 caller, who was on scene a few feet away, to confirm what he reported to 911 or to determine the location of the gun prior to them engaging with and subsequently frisking § 87(2)(b). Furthermore, PO Knitter's BWC confirms that the 911 caller does tell other officers on scene that he did not observe a weapon in § 87(2)(b) vehicle. Additionally, PO Rivera stated that, prior to frisking § 87(2)(b) there was no indication of the presence of a weapon on his person. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Edgar Rivera interfered with § 87(2)(b) use of a recording device.

PO Rivera's BWC (BR13, BR14) shows that, at the 3:40 mark, § 87(2)(b) is on his phone and PO Rivera tells him to put the phone away. § 87(2)(b) says he can use his phone if he wants. PO Rivera tells § 87(2)(b) to put his phone away. § 87(2)(b) did not mention recording or hold his phone in a manner that appeared to be recording.

§ 87(2)(b) (BR15) stated that, after he refused consent to search his vehicle, he pulled out his cellphone to record the incident. PO Rivera told § 87(2)(b) that he could not record. PO Rivera did not make contact with § 87(2)(b) cellphone. § 87(2)(b) complied and put his cellphone away.

PO Rivera (BR16) stated that § 87(2)(b) had his phone in his hand after he was frisked. § 87(2)(b) mentioned something about recording. PO Rivera told § 87(2)(b) to put his phone away, given the nature of the 911 call and that he does not feel comfortable when subjects have anything in their hands during vehicle stops. PO Rivera makes it typical practice to prevent stopped individuals from having anything in their hands for his safety. There was no other reason for telling § 87(2)(b) to put his phone away.

Patrol Guide procedure 203-29 notes that individuals have the right to lawfully observe and/or record police activity in public places, such as streets and sidewalks. This right can be limited for reasons such as officer safety or the safety of other members of the public, or when a violation of law is committed by the individual who is recording. However, officers may not intentionally block or obstruct cameras or other recording devices without a legitimate law enforcement purpose (BR24).

As established in Allegations A and B, § 87(2)(b) was legally stopped for possessing tinted window(s) and conducting an illegal U-turn. As noted in the Patrol Guide, officers may limit an individual's right to record when said individual has violated the law. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Force: Police Officer Edgar Rivera used physical force against § 87(2)(b)

PO Rivera's BWC (BR13, BR14) captures his entire involvement in this incident. At the 04:30 mark, that § 87(2)(b) removes his back from his vehicle. PO Rivera guides him toward the vehicle by his upper left arm and tells him to keep his back on the car, which he previously requested at the 02:04 mark. PO Rivera is not captured making contact with § 87(2)(b) forearm, squeezing his arm, or using force in any way.

§ 87(2)(b) (BR15) stated that when he attempted moving to the left, toward the passenger side of the vehicle, PO Rivera grabbed and squeezed his left forearm arm, aggressively, for about two seconds, and told him to stop moving. § 87(2)(b) testified that he had a small bruise as a result. At the time of his CCRB interview, § 87(2)(b) bruise had faded away. § 87(2)(b)

§ 87(2)(b) did not provide photos of the bruise.

PO Rivera (BR16) denied making physical contact with § 87(2)(b) apart from frisking his person.

PO Moncion (BR17) did not see PO Rivera make physical contact with § 87(2)(b) aside from the frisk.

Patrol Guide procedure 221-01 states that when determining if force is reasonable, uniformed members of service should consider the following: “the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, Size, age, and condition of the subject in comparison to the MOS, subject’s violent history, if known, presence of hostile crowd or agitators, subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence”(BR41).

Patrol Guide procedure 221-02 states that when a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should comply with P.G. 221-01 and do the following: Take necessary action to protect life and personal safety of all persons present, including subjects being placed into custody and utilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, among other additional steps (BR42).

Although § 87(2)(b) alleged that PO Rivera aggressively grabbed and squeezed his arm to limit his movement, PO Rivera’s BWC captures him using minimal force to guide § 87(2)(b) body toward the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Edgar Rivera refused to provide his name to

§ 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Edgar Rivera refused to provide his shield number to § 87(2)(b)

Neither PO Moncion’s (BR11, BR12) nor PO Rivera’s BWC (BR13, BR14), which shows their entire involvement in the incident, captures § 87(2)(b) requesting PO Rivera’s name or shield number.

§ 87(2)(b) (BR15) stated that, while at the rear of the vehicle with PO Rivera, he requested PO Rivera’s name and shield number, to which PO Rivera responded, “no”.

PO Rivera (BR16) did not recall § 87(2)(b) requesting his name or shield number.

PO Moncion (BR17) did not witness § 87(2)(b) request the names and shields of any officer on scene.

Given that the previously discussed BWC, which captures all of PO Rivera’s interactions with § 87(2)(b) does not show § 87(2)(b) requesting PO Rivera’s name or shield at any point in the incident, § 87(2)(g)

§ 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Christina Moncion searched the vehicle in which § 87(2)(b) **was an occupant.**

PO Moncion’s BWC (BR11, BR12) shows, at the 04:04 mark, § 87(2)(b) tell PO Moncion and PO Rivera that they can “check his car. I don’t have a gun”. PO Moncion thanks him for his consent to search. At the 04:20 mark, PO Moncion asks § 87(2)(b) if he could confirm that he provided consent for the officers to search his car. He says, “Yea” and then expresses concern about officers planting something in his vehicle. The footage does not capture PO Moncion

or any other officer preparing a consent to search form or any officer informing him that he could refuse consent. Neither PO Moncion's BWC (**BR11, BR12**), nor PO Rivera's BWC (**BR13, BR14**) capture PO Moncion speaking to the 911 caller at any point in the incident.

As previously noted, PO Christopher Knitter's BWC (**BR03, BR04**) shows, at the 02:18 mark, that he and PO Sanchez are speaking to the 911 caller, who confirms that about 10 vehicles have been following him for a week. At the 03:33 mark, the 911 caller states that § 87(2)(b) vehicle is one of the cars that have been following him; however, the driver who he saw with a weapon was in a White Jeep Cherokee. PO Moncion and PO Rivera were across the street, by § 87(2)(b) vehicle, during this conversation.

§ 87(2)(b) (**BR15**) stated that after he was frisked, PO Rivera told § 87(2)(b) that they would tell him why he was stopped after they searched his vehicle. § 87(2)(b) told PO Rivera that they could not search his vehicle. § 87(2)(b) remained at the rear of the vehicle while PO Moncion searched his vehicle; therefore, he did not see where she looked. After about two minutes, PO Moncion asked § 87(2)(b) for the keys of his trunk, which he provided. She searched the trunk, moving objects around. She did not recover anything from the search.

PO Rivera (**BR16**) stated that he did not recall if the 911 caller specified which of the two vehicles he reported possessed a weapon. When § 87(2)(b) stepped out of the vehicle, PO Moncion requested consent to search his vehicle. § 87(2)(b) provided verbal consent. PO Rivera did not remember § 87(2)(b) revoking his consent at any point. PO Rivera did not recall any officer telling § 87(2)(b) that he could refuse consent. PO Rivera did not believe a consent to search form was filled out. Given that PO Rivera was at the rear and focusing on § 87(2)(b) he did not observe PO Moncion's search of the vehicle. He did not remember if she searched the trunk of the vehicle. PO Moncion did not recover anything from § 87(2)(b) vehicle. PO Moncion went to speak with the 911 caller at some point in the incident, but he did not remember what they spoke about.

PO Moncion (**BR17**) stated that she did not remember if the 911 caller specified which vehicle, of the three he reported, possessed a weapon. Prior to stopping the vehicle, the 911 caller, who was on scene, repeatedly pointed at § 87(2)(b) vehicle. After having § 87(2)(b) step out of the vehicle, he provided consent to search his vehicle, telling the officers that he did not have anything in his car, and they could search it. He provided consent to search twice. PO Moncion did not remember if anyone informed § 87(2)(b) that he could refuse consent to search. There was no consent to search form filled out. PO Moncion conducted a search of the entire interior vehicle—on, under, and behind each seat, in the glove compartment, center console. She did not remember searching the trunk of the vehicle. She did not recover anything from the vehicle. § 87(2)(b) did not ever revoke his consent to search. Either before or after the vehicle search, PO Moncion spoke with the 911 caller, who confirmed that § 87(2)(b) vehicle was one of those that had been following him.

New York Administrative Code Section 14-173 notes that when obtaining voluntary consent to search, officers must articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to consent to such search voluntarily, knowingly, and intelligently and that such search will not be conducted if the person refuses to provide consent (**BR26**).

Patrol Guide procedure 212-11 notes that during a Level 2 (founded suspicion) or above encounter, officers may request consent to search, but the consent must be voluntarily given. The individual must elicit a clear "yes" or "no" response and the officers must explain that without their consent, the search will not occur. If voluntary consent is obtained, officers must prepare a consent search report (**BR27**).

People v. Gonzalez, 39 N.Y.2d 122 found that one of the limited exceptions to the warrant requirement is voluntary consent to the search. Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt, or subtle (**BR28**).

People v. De Bour 40 N.Y.2d 210 found that the police may stop a person pursuant to the common-law right to inquiry when they have founded suspicion that criminal activity is present. The police may not justify a stop by subsequently acquired suspicion resulting from the stop (BR43).

Neither PO Rivera nor PO Moncion recalled whether the 911 caller reported that § 87(2)(b) vehicle contained a weapon in his initial call. Although the 911 caller was on scene, the BWC discussed above, which captures the officers' entire involvement in this incident, does not capture either PO Moncion or PO Rivera speaking to the caller to confirm the location of the reported weapon, which the 911 caller confirms to other officers is not in § 87(2)(b) car.

§ 87(2)(g)

§ 87(2)(g)

Allegation (I) Discourtesy: Police Officer Edgar Rivera spoke discourteously to § 87(2)(b).

PO Rivera's BWC (BR13, BR14) captures him using profanity at multiple points in this incident. At the 03:20 mark, PO Rivera says, "now you confusing the shit out of me," when discussing what § 87(2)(b) was doing prior to being stopped. At the 03:26 mark, § 87(2)(b) continues speaking and PO Rivera says, "now you gonna talk shit." At the 03:46 mark, PO Rivera tells § 87(2)(b) "Now you gonna be an asshole." At the 03:58 mark, PO Rivera tells § 87(2)(b) that someone called and said he had a gun, which is why he took him out of the "fucking car." At the 04:24 mark, PO Moncion says, "you said we could search your car, right?" and § 87(2)(b) agrees but said he is afraid that they will plant something. PO Rivera responds, "cut the shit, cut the shit." At the 04:49 mark, PO Rivera tells § 87(2)(b) that if the caller is "full of shit" then he can be on his way. At the 09:10 mark, § 87(2)(b) mentions that he is trying to become a police officer and PO Rivera asks § 87(2)(b) why he said weird "shit" to them.

§ 87(2)(b) (BR15) did not mention PO Rivera using profanity during this incident.

During a second interview, PO Rivera (BR29) stated that he used profanity at multiple points in this incident. He acknowledged his voice making all of the statements captured on BWC and denied any malicious intent when using profanity. PO Rivera used profanity given the tense situation caused by § 87(2)(b) evasive answers to questions and the allegations of his possessing a weapon. He stated that he used a poor choice of words and had no other reasons, apart from the aforementioned, for using discourteous language.

Patrol Guide procedure 200-02 notes that the NYPD's mission is to protect the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. In doing so, they pledge to maintain a higher standard of integrity than is generally expected of others (BR30).

Disciplinary Case 2013-10143 found that profanity among officers is found to be permissible where the officer has resorted to such language in the heat of a highly dangerous situation or to serve a law enforcement purpose (BR31).

PO Rivera's BWC shows that, at the time of each use of profanity, PO Rivera was standing by § 87(2)(b) in an objectively low stress and non-threatening situation. Additionally, PO Rivera's use of profanity was not associated with a command or other law enforcement purpose.

§ 87(2)(g)

§ 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Edgar Rivera threatened to arrest § 87(2)(b)

PO Rivera's BWC (BR13, BR14) shows, at the 09:28 mark, that § 87(2)(b) tells the officers that he wants to file a complaint against the 911 caller because he lied about § 87(2)(b) having a gun in his car. At the 09:45 mark, he asks PO Moncion if they would respond if he reported that the 911 caller had a gun. PO Moncion confirms that they would respond because that is their job. At the 09:52 mark, PO Rivera tells § 87(2)(b) that if he tried to be "funny" and make a call about a caller having a gun in the car then he would go and arrest him.

§ 87(2)(b) (BR15) did not state that he was threatened with arrest during this incident.

PO Rivera (BR16) stated that § 87(2)(b) made a statement about making a retaliatory phone call to 911—along the line of reporting that the 911 caller had a gun in his vehicle. PO Rivera did not know what § 87(2)(b) intentions were with making such a call. He informed § 87(2)(b) that he could be arrested for making such a retaliatory call.

New York Consolidated Laws, Penal Law 240.50 notes that a person is guilty of falsely reporting an incident in the third degree when, knowing the information reported, conveyed, or circulated to be false or baseless, they initiate or circulate a false report or warning of an alleged occurrence or impending occurrence of a crime, catastrophe, or emergency under circumstances in which it is not unlikely that public alarm or inconvenience will result (BR32).

§ 87(2)(g)

Allegation (K) Abuse of Authority: Police Officer Christina Moncion failed to provide § 87(2)(b) with a business card.

Allegation (L) Abuse of Authority: Police Officer Edgar Rivera failed to provide § 87(2)(b) with a business card.

Neither PO Moncion's (BR11, BR12) nor PO Rivera's (BR13, BR14) BWC videos capture either officer providing § 87(2)(b) with a business card.

§ 87(2)(b) (BR15) stated that he did not receive any business cards at the result of this incident.

PO Moncion (BR17) and PO Rivera (BR16) both stated that they did not recall providing § 87(2)(b) with a business card at any point in the incident.

Patrol Guide procedure 203-09 notes that officers are required to offer pre-printed right to know business card upon the conclusion of law enforcement activities—including vehicle stops, except in cases when a summons is issued or an arrest is made, or exigent circumstances are present. NYPD (BR25).

New York City Administrative Code § 14-174 notes that officers are required to offer a business card to individuals at the conclusion of any law enforcement activity, including pedestrian stops based on reasonable suspicion, that does not result in an arrest or summons (BR33).

Given that neither PO Moncion nor PO Rivera provided § 87(2)(b) with a business card at any point during this incident, § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g)

§ 87(4)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR38**).
- PO Moncion has been a member of service eight years. She has been named the subject in 16 other CCRB complaints and 52 allegations, nine of which have been substantiated:
 - § 87(2)(g)
 - 202003343 involves substantiated allegations of failure to provide RTKA card. The CCRB recommended charges. The NYPD's recommendations and imposed penalties are not noted.
- PO Rivera has been a member of service eight years. He has been named the subject in 45 CCRB complaints and 36 allegations, 14 of which have been substantiated:
 - 201702768 involves a substantiated allegation of threat of force. The NYPD recommended and imposed instructions.
 - § 87(2)(g), § 87(4-b)
 - 201703447 involves a substantiated allegation of refusal to provide name and shield. The NYPD recommended and imposed command level instructions.
 - 201806414 involves a substantiated allegation of discourtesy-word. The NYPD recommended and imposed command level instructions.
 - § 87(2)(g), § 87(4-b)
 - § 87(2)(g), § 87(4-b)

- § 87(2)(g), § 87(4-b) [REDACTED]
- § 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- On May 31, 2022, the investigation received confirmation from the Office of the New York City Comptroller that § 87(2)(b) [REDACTED] did not file a notice of claim regarding this incident (BR40).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad: 10

Investigator: <u>Jessica Russo</u>	Inv. Jessica Russo	06/22/2022
Signature	Print Title & Name	Date

Squad Leader: <u>Maura R. Roche</u>	IM Maura R. Roche	06/22/2022
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date